

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of) MM Docket No. 95-43
)
Amendment of Section 73.202(b)) RM-8580
Table of Allotments)
FM Broadcast Stations.)
(Grand Junction, Colorado))

RECEIVED

JUN 1 1995

TO: John A. Karousos, Chief, Allocations Branch
Policy and Rules Division, Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF GRAND VALLEY PUBLIC RADIO COMPANY, INC.

1. Grand Valley Public Radio Company, Inc. ("Grand Valley") hereby submits its Comments in response to the Notice of Proposed Rule Making ("NPRM"), DA 95-723, released April 14, 1995 in the above-captioned proceeding. The purpose of these Comments is three-fold: (a) to restate Grand Valley's intention to utilize the proposed allotment; (b) to renew Grand Valley's request that Grand Valley's permit be modified to specify that proposed channel in the instant proceeding; and (c) to clarify the question of commercial/noncommercial use of the proposed channel.

Statement of Intention

2. Grand Valley continues to believe that allotment of Channel 264C1 to Grand Junction, Colorado would be in the public interest, and Grand Valley hereby specifically restates its intentions (a) to seek to modify its permit (File No. BPED-930702MB) to specify that channel if the allotment is made ^{1/},

^{1/} Grand Valley notes that, as discussed elsewhere in these Comments, Grand Valley believes that its permit can and should be modified in the context of the instant rule making proceeding, and Grand Valley specifically requests such modification.

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and (b) to implement, as promptly as possible, that modification if it is authorized.

Modification of Construction Permit

3. In the NPRM, the Commission declined to propose the modification of Grand Valley's permit pursuant to Section 1.420(g) of the Commission's Rules, as Grand Valley had specifically proposed in its petition. See Grand Valley Petition at 2, ¶3. ^{2/} Grand Valley hereby renews its request that, in the context of the instant proceeding, the Commission modify Grand Valley's permit to specify Channel 264C1 pursuant to Section 1.420(g)(2).

4. Such modification is warranted because, as Grand Valley demonstrated in its petition, at least two full Class C commercial channels -- Channels 277C and 293C -- are available for allotment to Grand Junction. See Grand Valley Petition at ¶¶1, 3 and Technical Statement at 5-7 and Figures 25-30.

5. Section 1.420(g) provides, in relevant part, that modification of a proponent's permit in the course of the rule making proceeding is appropriate if

(1) There is no other timely filed expression of interest or,

^{2/} While the NPRM itself does not propose modification of Grand Valley's permit, Grand Valley notes that the summary of the NPRM included in the Commission's Daily Digest for April 14, 1995 (the date the NPRM was released) reads as follows:

GRAND JUNCTION, CO. Proposed allotting Channel 264C1 to Grand Junction and modifying the construction permit of noncommercial educational station KAFM(FM), Grand Junction, accordingly.

A copy of that Daily Digest is included as Attachment A hereto.

(2) If another interest in the proposed channel is timely filed an additional equivalent class of channel is also allotted, assigned or available for application . . .

In the instant case it is still too early to determine whether any "other timely filed expression[s] of interest" might be filed. But even if such expressions were to be filed, it would be immaterial, because not just one, but two additional equivalent ^{3/} channels are available for allotment to accommodate such additional expressions of interest. In view of the availability of those additional channels, modification of Grand Valley's permit is clearly warranted pursuant to Section 1.420(g)(2), quoted above.

6. In the NPRM, the Commission did not address Grand Valley's showing (at pages 5-7 of the Technical Statement accompanying its petition), concerning the availability of these other channels, or the legal consequences under Section 1.420(g)(2) of that availability. Instead, the Commission simply stated that

since Channel 264C1 is not an equivalent class channel to Channel 201A [Grand Valley's presently authorized channel], and the channels are not mutually exclusive, petitioner's present authorization cannot be modified

^{3/} Indeed, the two additional channels identified by Grand Valley are actually superior to the channel which Grand Valley seeks for itself. While Grand Valley's proposed channel is a Class C1, the other available channels could be allotted not simply as Class C1 channels, but as full Class C channels. Those channels thus plainly satisfy the Commission's intent underlying Section 1.420(g). See Modification of FM and Television Station Licenses, 56 R.R.2d 1253, 1256, ¶8 (1984) (in order to support modification of a proponent's permit, the additional channel proposed to accommodate other expressions of interest "must be of a class at least equivalent to the proposed channel" (emphasis added)).

to specify operation on the commercial channel. Moreover, the proposed allotment of Channel 264C1 would not fall within any established exception to the Commission's Rules that new allotments must be made available for general application.

NPRM at ¶4.

7. The observations in the first quoted sentence concerning the non-equivalency and non-mutual exclusivity of Grand Valley's present and proposed channels, while true, are inconsequential, as the Commission's Rules do not require that the channel which is being abandoned be the equivalent of, or mutually exclusive with, the channel to be allotted. E.g., Amendment of Section 73.202(b) (Vero Beach, Florida), 4 FCC Rcd 2184 (1989). As for the second quoted sentence, Grand Valley submits that that misstates the Commission's policy in this area. As noted above, the Commission's Rules and precedent clearly provide that, in situations such as Grand Valley's ^{4/}, modification of a permit is warranted. 47 C.F.R. §1.420(g)(2); Vero Beach, supra.

8. Accordingly, Grand Valley renews its request that, in connection with the proposed allotment of Channel 264C1, Grand Valley's outstanding construction permit be modified to specify that channel.

Use of Channel for Noncommercial Purposes

9. Finally, it appears from the NPRM that there may be some confusion concerning the precise nature of Grand Valley's proposal relative to Channel 264C1. In Paragraph 3 the NPRM

^{4/} That is, where it is shown that at least one additional, equivalent channel is available.

suggests that Grand Valley may have sought to have Channel 264C1 reserved for noncommercial use, even though that channel is in the unreserved portion of the FM band normally utilized by commercial broadcasters. But as Grand Valley attempted to make clear in its petition, Grand Valley is not requesting that the allotted channel itself be formally designated (with an "*" in the Table of Allotments, see, e.g., Butte, Montana, 9 FCC Rcd 2180 (Allocations Branch 1994)) as reserved for noncommercial broadcasting.

10. For Grand Valley's purposes the channel can be allotted as a commercial channel. As noted in its petition, whatever the channel's designation, Grand Valley intends to offer a noncommercial service, as reflected in Grand Valley's outstanding noncommercial construction permit. But, to the best of Grand Valley's knowledge, nothing in the Commission's Rules precludes such noncommercial operation on a "commercial" channel.^{5/} Thus, even if Channel 264C1 were allotted as a "commercial" channel, Grand Valley could still operate as a noncommercial broadcaster on that channel.

11. So that there can be no mistake about this, Grand Valley is not proposing that Channel 264C1 be reserved strictly for noncommercial use. If the Commission, on its own motion, decides to impose such a reservation, Grand Valley would have no objection; but Grand Valley is not requesting such a reservation

^{5/} The converse, of course, is not true -- that is, a channel in the portion of the FM band reserved for noncommercial broadcasting cannot be utilized for commercial services.

and does not believe such a reservation to be necessary. Grand Valley does intend to operate its station as a noncommercial facility, consistent with its initial application and with the terms of its construction permit. However, to the best of Grand Valley's knowledge, no rule or policy of the Commission precludes such operation on a commercial channel. Accordingly, Grand Valley proposes that commercial Channel 264C1 be allotted to Grand Junction and that Grand Valley's permit be modified to specify use of that channel.

WHEREFORE, for the reasons stated, Grand Valley Public Radio Company, Inc. proposes that: (a) Channel 264C1 be allotted to Grand Junction; (b) Grand Valley's construction permit be modified to specify operation on Channel 264C1; and (c) to the extent that any other expressions of interest in use of Channel 264C1 may be submitted, Channel 277C and/or Channel 293C be allotted to accommodate any such additional expressions.

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Grand Valley Public
Radio Company, Inc.

June 1, 1995

ATTACHMENT A



DAILY DIGEST

Federal Communications Commission
1919 - M Street, N.W.
Washington, D. C. 20554

News media Information 202 / 418-0500
Recorded listing of release and texts
202 / 418-2222

These are unofficial announcements of Commission actions. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 2d 385 (D.C. Circ. 1974). A list of other releases and documents made available today also is included.

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Vol. 14, No. 71

April 14, 1995

NEWS RELEASE

ABBIE BAYNES TO LEAVE COMMISSION [Internet
file name: nrnc5030.txt] 001

PUBLIC NOTICES

CABLE SERVICES BUREAU GRANTS CONTINENTAL
CABLEVISION MOTION TO DISMISS PETITION FOR
SPECIAL RELIEF - Contact Lisa M. Higginbotham or
Tom Power at (202) 416-0800 [Internet file name: pncb-
5009.txt] 003

THE NEW ENGLAND PLANNING COMMITTEE
ANNOUNCES THE OPENING OF A NEW FREQUENCY
APPLICATION WINDOW - The filing period will be
August 1 through August 31, inclusive 005

TRS FUND WORKSHEET AVAILABLE - Contact: Sholo
B. Hair at (202) 418-1379 007

TARIFF TRANSMITTAL PUBLIC REFERENCE LOG:
April 13 009

EX PARTE PRESENTATIONS AND POST-REPLY
COMMENT PERIOD FILINGS IN NON-RESTRICTED
PROCEEDINGS - Contact: Barbara Lowe at (202) 418-
0310 013

PRIVATE OPERATIONAL-FIXED SERVICE
FREQUENCIES TO BE AVAILABLE FOR
REASSIGNMENT - Contact: Microwave Branch at (717)
337-1421 021

Report No. 252 - MASS MEDIA BUREAU CALL SIGN
ACTIONS 023

Report No. 1027 - CABLE TELEVISION SERVICE
REGISTRATIONS; SPECIAL RELIEF AND OTHER
FILINGS Late

Report No. 16158 - BROADCAST APPLICATIONS 025

Report No. 22132 - BROADCAST ACTIONS 037

Report No. CL-95-78 - WIRELESS
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Report No. CL-95-79 - WIRELESS
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Report No. LB-95-09 - WIRELESS
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TEXTS

GRAND JUNCTION, CO. Proposed allotting Channel
264C1 to Grand Junction and modifying the construction
permit of noncommercial educational station KAFM(FM),
Grand Junction, accordingly. Comments are due June 5,
replies June 20. (MM Docket No. 95-43 by NPRM [DA
95-723] adopted April 3 by the Chief, Allocations Branch,
Mass Media Bureau) 111

PAHRUMP, NV. Proposed allotting Channel 236A to
Pahrump as its second FM service. Comments are due June
5, replies June 20. (MM Docket No. 95-45 by NPRM [DA
95-765] adopted April 6 by the Chief, Allocations Branch)
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